IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7065 of 1998
with
FIRST APPEAL No 7066 of 1998
with
FIRST APPEAL No 32 of 1999
with
FIRST APPEAL No 34 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
   to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
   of the judgement?

4. Whether this case involves a substantial question : NO
   of law as to the interpretation of the Constitution
   of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO
   1 to 5 No

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AHMEDABAD MUNICIPAL CORPORATION

Versus

JAIKISHAN THAWARDAS

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Appearance:

MR PRASHANT G DESAI for Petitioner

DS AFF.NOT FILED (N) for Respondent No. 1

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CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 14/12/2000

ORAL JUDGEMENT

In view of the fact that the facts involved in all these four appeals are similar, at the request of the learned advocates and with their consent, these four appeals are disposed of by this common judgment.

2. The facts, in a nutshell, which are necessary for the purpose of disposal of these appeals, are as under :

3. The respondents-original plaintiffs had migrated from Pakistan and had settled in Ahmedabad in the past. At that time they started doing business in a locality named Revdi Bazar on public street without obtaining any permission from the Municipal Corporation and thus they were encroachers. In the past notices were issued by the plaintiffs for removal of the encroachment, but as the said notices were not legal, in earlier proceedings with which we are not concerned, the plaintiffs had succeeded and it was observed in the said judgment that it would be open to Ahmedabad Municipal Corporation, i.e. the present appellant, to take appropriate action for removal of the encroachment in accordance with law.

4. The plaintiffs were issued notices under the provisions of sec. 231 of Bombay Provincial Municipal Corporations Act (hereinafter referred to as 'BPMC Act') for removing the encroachments made by them. The said notices were challenged by the plaintiffs by filing different suites. Along with the plaintiffs, some other encroachers had also filed suits against Ahmedabad Municipal Corporation i.e. the present appellant. The City Civil Court, Ahmedbad, had heard all the suits together and had delivered a common judgment in Regular Civil Suit No. 1066/86. All the suits were decreed on the ground that the plaintiffs were not given any show-cause notices before the impugned removal notice was given to them.

5. Being aggrieved by the common judgment passed in Regular Civil Suit No. 1066/86, the appellant-defendant has approached this court.

6. It is pertinent to note that First Appeals Nos. 24 to 31, 33, 35 to 40 and 42 to 45 of 1999 were also filed against the judgment and decree passed in Regular Civil Suit No. 1066/86. By a common judgment dated 19th October 2000 the said appeals have been allowed. Somehow the present appeals could not be tagged along with the

First Appeals referred to hereinabove and, therefore, these appeals could not be decided at the relevant by this Court (Coram: Y.B. Bhatt, J.) on 19.10.2000.

7. In view of the fact that now the appeals filed against Regular Civil Suit No. 1066/86 passed by the City Civil Court, Ahmedbad have already been allowed in the First Appeals referred to hereinabove, nothing more is required to be done by this court especially in view of the fact that it has been held by the Hon'ble Supreme Court in the case of Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan, AIR 1997 SC 152 that it is not necessary to give any show-cause notice before issuance of notice under sec.231 of the BPMC Act for removal of an encroachment made on a public street.

8. The above-referred position could not be disputed by learned advocate Shri Mulia appearing for the respondents-original plaintiffs. In the circumstances, for the reasons recorded hereinabove and in the judgment delivered in First Appeals Nos. 24 to 31 of 1999 and other allied matters dated 19.10.2000, the judgment and decree passed in all the suits which are subject-matter of the present appeals are quashed and set aside. The appeals are allowed with no order as to costs.

9. It has been submitted by the learned advocates that against the judgment delivered in First Appeals Nos. 24 to 31 of 1999 and other allied matters, Letters Patent Appeals have been filed. Though the appeals have not been admitted, by an ad-interim order, the appellants have been directed to maintain status-quo. Looking to the said fact, learned advocate Shri Mulia has submitted that the appellants should also be directed to maintain status-quo upto 8.1.2001 so that the respondents can approach the appropriate forum. The request is granted and the appellant is directed to maintain status-quo upto 8.1.2001.

(A.R. Dave, J.)

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